SOO KOK LOONG

v.

HONG KONG & SHANGHAI BANKING CORPORATION LTD

COURT OF APPEAL, PUTRAJAYA
SURIYADI HALIM OMAR JCA
HISHAMUDIN MOHD YUNUS JCA
AZHAR MA'AH JCA
[CIVIL APPEAL NO: W-03-25-06]
17 JUNE 2009

BANKRUPTCY: *Adjudication and receiving orders - Annulment of - Whether creditor entitled to file bankruptcy notice - Amount of debt owing by debtor at time of issuance of bankruptcy notice - Computation of debt - Whether below permitted statutory limit for filing of bankruptcy action - Bankruptcy Act 1967, ss. 3(2)(ii), 5(1)(a), 105(1), 131*

BANKRUPTCY: *Notice - Amount - Calculation of actual amount owing at time of issuance of bankruptcy notice - Conversion from Singapore currency to Malaysian currency - Correct computation to be applied - Whether debt below permitted statutory limit for filing of bankruptcy action*

This was an appeal by the debtor/appellant against the decision of the senior assistant registrar of the High Court ('registrar') in a bankruptcy petition making a receiving order and an adjudication order against the appellant. The appellant then applied under s. 105(1) of the Bankruptcy Act 1967 ('Act') for the adjudication order to be annulled and the receiving order to be rescinded. The registrar refused the application and the appellant, dissatisfied, appealed to the judge in chambers. The judge dismissed the appeal, resulting in the present appeal. The crucial issue requiring consideration was the amount of the debt owing by the appellant at the time of the issuance of the bankruptcy notice, whether it was RM9,409.35 (as contended by the appellant) or RM12,440.79 (as maintained by the creditor/respondent). The appellant submitted that, if the former was the case, then the respondent was not entitled to file the bankruptcy notice since the minimum amount requirement was not met. The adjudication order should not have been made against the appellant in the first place

A and, hence, now, ought to be annulled as this would have been a case where the appellant ought not to have been adjudged a bankrupt. In the present case the appellant's debt and the partial repayments of the debt by him were in Singapore currency. Thus, also tied to the issue of the actual amount owing, was the issue
B as to when the conversion from Singapore currency to Malaysian currency ought to be made, for the purpose of determining the actual amount owing at the time of the issuance of the bankruptcy notice.

C **Held (allowing the appeal)**
Per Suriyadi Halim Omar JCA delivering the judgment of the court:

(1) Upon construing the consent order, it was sensible and reasonable to deduct all the part-payment sums from the
D principal sum in its original currency, and only prior to the filing of the bankruptcy notice should the respondent convert the balance into Ringgit Malaysia, at the prevailing market value. If the sum owed exceeded the statutory threshold after the conversion, then only may a bankruptcy notice be issued.
E Otherwise the matter ended there. With the sum owed at the time of issuance of the bankruptcy notice being RM9,031.35 (S$3,943.82 x 2.29) the amount owing was below the permitted statutory limit for the filing of a bankruptcy action.
F (para 15)

(2) Section 3(2)(ii) of the Act was inapplicable, unhelpful to the respondent and irrelevant. In gist, it demands that the bankruptcy notice be served in the prescribed manner and form, with consequences that will follow for want of its
G compliance. It legislates that a bankruptcy notice is not to be invalidated by reason only that the sum specified in the notice exceeds the amount actually due, unless within the time allowed for payment, the debtor gives notice to the creditor that he disputes the validity of the notice. If no notice is given
H the creditor shall be deemed to have complied with the bankruptcy notice. In this instance, it was obvious that the appellant's complaint was not restricted to the mere incorrectness of the sum due to the respondent, but something that was fatal. Mathematically speaking, the
I appellant only owed the respondent $S3,943.82 (RM9,031.35)

and costs of RM378 at the time of the filing of the bankruptcy notice, creditor's petition and date of the hearing. (paras 16 & 17)

(3) From the facts, and after adhering to the aforementioned mode of calculation of the balance sum owed, it was concluded that the respondent's calculation was wrong. That being so, the bankruptcy notice was bad. The error was fatal and could not be salvaged by s. 3(2)(ii) of the Act as the sum owing to the respondent was far below the statutory bar. This was not a formal defect or irregularity that could be saved by s. 131 of the Act. The bankruptcy notice had failed to comply with the mandatory requirement of s. 5 of the Act. (para 18)

Per Hishamudin Yunus JCA (concurring):

(1) From the appellant's computation, conversion from Singapore currency to Malaysian currency was made only once, that is, after the deduction of the two instalment payments made in the Singapore currency; what should be converted was only the balance sum of S$3,943.82 and not any other sum (or sums). The appellant's method of computation was fair and correct. This was because the judgment debt was stated in Singapore currency and it was clearly stated in the judgment that the instalments could be paid in that currency. Hence, as a matter of principle, conversion to Malaysian currency, for the purpose of bankruptcy, should only be made at the time of the issuance of the bankruptcy notice. To embark on the conversion of any other sum or sums (other than the sum of S$3,943.82), for the purpose of determining the actual amount owing at the time of the issuance of the bankruptcy notice, was tantamount to denying the appellant the exercise of his right under the judgment to the fullest. (paras 33 & 34)

(2) Paragraph (ii) of the proviso to subs. (2) of s. 3 of the Act was irrelevant. This was because the amount actually due under the bankruptcy notice did not in the first place meet the minimum requirement as stipulated by s. 5(1)(a) of the Act. In other words, the request for the issuance of the bankruptcy notice ought not to have been made by the respondent in the first place. The cases cited by the respondent, with respect, were also irrelevant. The issue in those cases concerned the stating of excessive demands in the

bankruptcy notice. Those cases did not deal with the issue of satisfying the minimum sum requirement as stipulated by s. 5(1)(a) of the Act. (para 37)

Bahasa Malaysia *Translation Of Headnotes*

Ini adalah rayuan oleh penghutang/perayu terhadap keputusan penolong pendaftar kanan Mahkamah Tinggi ('pendaftar') dalam satu petisyen kebankrapan membuat suatu perintah penerimaan dan suatu perintah penghukuman terhadap perayu. Perayu kemudiannya memohon di bawah s. 105(1) Akta Kebankrapan 1967 ('Akta') untuk perintah penghukuman dan perintah pemerimaan itu dibatalkan. Pendaftar menolak permohonan itu dan perayu, tidak berpuashati, merayu kepada hakim dalam kamar. Hakim menolak rayuan itu, mengakibatkan rayuan semasa. Isu penting yang perlu dipertimbangkan ialah amaun hutang yang dihutang oleh perayu pada masa pengeluaran notis kebankrapan itu, sama ada ia RM9,409.35 (seperti yang didakwa oleh perayu) atau RM12,440.79 (seperti yang dipertahankan oleh pemiutang/ responden). Perayu menghujah bahawa, jika yang pertama merupakan amaun yang betul, responden tidak berhak memfail notis kebankrapan itu disebabkan keperluan amaun minima tidak dipenuhi. Perintah penghukuman itu tidak sepatutnya dibuat terhadap perayu pertama sekali dan, oleh itu, sekarang, seharusnya dibatalkan kerana ini merupakan satu kes di mana perayu tidak sepatutnya dihukum sebagai bankrap. Dalam kes semasa hutang perayu dan bayaran sebahagian olehnya ialah dalam mata wang Singapore. Oleh itu, juga berhubungan dengan isu amaun sebenar yang dihutang, ialah isu mengenai bila penukaran daripada mata wang Singapore kepada mata wang Malaysia sepatutnya dibuat, bagi tujuan untuk menentukan amaun sebenar yang dihutang pada masa pengeluaran notis kebankrapan itu.

Diputuskan (membenarkan rayuan)
Oleh Suriyadi Halim Omar HMR menyampaikan penghakiman mahkamah:

(1) Setelah mentafsirkan perintah persetujuan, ia merupakan wajar dan munasabah untuk memotong semua bayaran sebahagian daripada jumlah utama dalam mata wang asalnya, dan hanya sebelum pemfailan notis kebankrapan itu responden seharusnya menukar baki itu kepada Ringgit Malaysia, mengikut nilai pasaran pada masa itu. Jika jumlah yang dihutang melebihi

ambang statutori selepas penukaran itu, hanya ketika itu satu notis kebankrapan boleh dikeluarkan. Kalau tidak, perkara itu berakhir di sana. Dengan jumlah yang dihutang pada masa pengeluaran notis kebankrapan sebanyak RM9,031.35 (S$3,943.82 x 2.29) amaun yang dihutang ialah di bawah tahap statutori yang dibenarkan bagi pemfailan suatu tindakan kebankrapan.

(2) Seksyen 3(2)(ii) Akta tidak boleh dipakai, tidak menolong responden dan tidak berkaitan. Dalam inti patinya, ia berkata bahawa notis kebankrapan disampaikan dalam cara dan bentuk yang ditetapkan, dengan akibat-akibat yang akan menyusul jika ia tidak dipatuhi. Ia mengatakan bahawa suatu notis kebankrapan tidak seharusnya ditaksahkan disebabkan hanya bahawa jumlah yang diletak dalam notis melebihi amaun yang sebenarnya kena dibayar, kecuali dalam masa yang dibenarkan untuk bayaran, penghutang memberi notis kepada pemiutang bahawa beliau mempertikaikan keesahan notis itu. Dalam kes ini, ia adalah jelas bahawa aduan perayu bukan terhad kepada hanya ketidakbetulan jumlah yang kena dibayar kepada responden, tetapi sesuatu yang fatal. Secara matematik, perayu hanya berhutang responden $S3,943.82 (RM9,031.35) dan kos sebanyak RM378 pada masa pemfailan notis kebankrapan, petisyen pemiutang dan tarikh pembicaraan itu.

(3) Dari fakta-fakta, dan selepas mematuhi cara pengiraan baki jumlah yang dihutang seperti yang dinyatakan di atas, ia telah diputuskan bahawa pengiraan responden adalah salah. Oleh yang demikian, notis kebankrapan itu adalah tidak sah. Kesilapan itu adalah fatal dan tidak boleh diselamatkan oleh s. 3(2)(ii) Akta oleh kerana jumlah yang dihutang kepada responden adalah jauh di bawah rintangan statutori. Ini bukan suatu kecacatan formal atau luar aturan yang boleh diselamatkan oleh s. 131 Akta. Notis kebankrapan itu telah gagal mematuhi keperluan mandatori s. 5 Akta.

Oleh Hishamudin Yunus HMR (menyetujui):

(1) Dari pengiraan perayu, penukaran daripada mata wang Singapore kepada mata wang Malaysia hanya dibuat sekali, iaitu, selepas pemotongan dua pembayaran ansuran yang telah dibuat dalam mata wang Singapore; apa yang perlu ditukar ialah hanya jumlah baki S$3,943.82 dan bukan apa-apa jumlah

A yang lain. Cara pengiraan perayu adalah adil dan betul. Ini adalah kerana hutang penghakiman telah dinyatakan dalam mata wang Singapore dan ia dinyatakan dengan jelas dalam penghakiman itu bahawa ansuran boleh dibayar dalam mata wang itu. Oleh yang demikian, mengikut prinsip, penukaran B kepada mata wang Malaysia, bagi tujuan kebankrapan, sepatutnya hanya dibuat pada masa pengeluaran notis kebankrapan. Untuk memulakan suatu penukaran apa-apa jumlah yang lain (selain dari jumlah S$3,943.82), bagi tujuan menentukan amaun sebenar yang dihutang pada masa C pengeluaran notis kebankrapan itu, sama seperti menghalang perayu penggunaan haknya di bawah penghakiman dengan sepenuhnya.

(2) Perenggan (ii) proviso kepada subs. (2) s. 3 Akta adalah tidak D berkaitan. Ini adalah sebab amaun yang sebenarnya kena dibayar di bawah notis kebankrapan itu tidak pertama sekali memenuhi keperluan minima seperti yang disyaratkan oleh s. 5(1) Akta. Dalam kata-kata lain, permintaan untuk pengeluaran notis kebankrapan itu pertama sekali tidak E sepatutnya dibuat oleh responden. Kes-kes yang dinamakan oleh responden, dengan hormatnya, juga tidak berkaitan. Isu dalam kes-kes itu berhubungan dengan penyataan tuntutan-tuntutan yang melampau dalam notis kebankrapan itu. Kes-kes itu tidak berkaitan dengan isu memenuhi keperluan jumlah F minima seperti yang disyaratkan oleh s. 5(1)(a) Akta.

Case(s) referred to:

Development & Commercial Bank Bhd v. Datuk Ong Kian Seng [1995] 3 CLJ 307 FC ***(refd)***

Re Amarjit Kaur Bakshis Singh, Ex p BSN Commercial Bank (Malaysia) G *Bhd [2001] 1 CLJ 412 HC* ***(refd)***

Re Child [1892] 2 QB 77 ***(refd)***

Re Mat Shah; ex parte Raghbir Singh [1981] 2 MLJ 159 ***(refd)***

Re Shuaib Lazim ex parte Mercantile Insurance Sdn Bhd [1992] 4 CLJ 2066; [1992] 3 CLJ (Rep) 580 HC ***(refd)***

Re Shuib Hj Ibrahim, Ex p BPK Credit & Leasing Sdn Bhd [2003] 3 CLJ H *679 HC* ***(refd)***

Re: Wong Choo Tah @ Wang Tse Son; Ex p Phileo Allied Bank (M) Bhd [2004] 1 LNS 177 ***(refd)***

Re Woo Yoke San, ex p OCBC Bank (M) Bhd [2006] 2 CLJ 589 ***(refd)***

I

Legislation referred to:
Bankruptcy Act 1967, ss. 3(2)(ii), 5(1)(a), 105(1), 131

For the appellant - HC Tan (KH Ch'ng with him); M/s Ch'ng Kim Hock & Assoc
For the respondent - Emilia Van Buerle; M/s Raja Darryl & Loh

[Appeal from High Court, Kuala Lumpur; Bankruptcy No: D2-29-292-1998]

Reported by Suresh Nathan

JUDGMENT

Suriyadi Halim Omar JCA:

[1] This panel heard the appeal filed by the judgment debtor (hereinafter referred to as the appellant) to annul the adjudication order of the court, and had allowed it with costs.

[2] The appellant was previously the defendant in a credit card action commenced by the plaintiff (hereinafter referred to as the respondent) at the Magistrate Court. A consent judgment was recorded on 1 November 1996 with the terms being:

> ... Defendan hendaklah membayar jumlah wang sebanyak S$9,887.82 (S$ being Singapore dollars) atau yang bersamaan dalam Ringgit Malaysia pada masa pembayaran secara ansuran bulanan iaitu ansuran pertama sebanyak S$4,943.91 hendaklah dibayar dalam masa dua (2) minggu dari 1hb November 1996dan empat (4) ansuran bulanan sebanyak S$ 1,000.00 setiap satu pada atau sebelum ... dengan ansuran terakhir sebanyak S$ 943.91 pada atau sebelum 1 hb April 1997. Dan bahawa sekiranya berlaku kemungkiran di dalam mana-mana ansuran bulanan tersebut, kesemua jumlah sebanyak S$ 9,887.82 menjadi terhutang dan kena dibayar dengan serta merta dengan kos tindakan RM378.00 (explanation ours).

[3] The problem started when the appellant defaulted on the 3rd installment. Regardless of it he had paid altogether S$5,943.91 (S$ 4,943.91 and S$ 1,000) for the first and second instalments prior to the filing of the bankruptcy notice. He then contended that the balance of the judgment sum owed at the time when the bankruptcy notice was issued, was only S$3,943.82, but regretfully the respondent had computed the balance owed in ringgit Malaysia, in a manner that was disadvantageous to the appellant.

[4] According to the appellant he had made the earlier two payments in Singapore dollars (SGD) but the respondent had converted the repayment from SGD into Malaysian ringgit (RM) at the time when the payments were made. A bankruptcy notice was served on the appellant on 9 June 1998, to be followed in its wake by a creditor's petition for the sum of RM12,440.79 against him. An adjudication and receiving order was meted down against the appellant on 16 December 1998. After that AORO was obtained by the respondent against the appellant, the latter then applied to the senior assistant registrar (SAR) for it to be annulled and or rescinded pursuant to s. 105 of the Bankruptcy Act 1967 (the Act).

[5] The grounds of the application as set out in the summons in chambers were that, the respondent was not entitled to present the bankruptcy petition, given that the debt owed by the appellant was less than RM10,000, and that the bankruptcy notice dated 11 February 1988 was defective. Unfortunately the appellant was unsuccessful. Being dissatisfied with the decision, the appellant thereupon appealed to the High Court judge but again met with failure. He then filed to the Court of Appeal and we heard the appeal whereupon he was successful.

[6] In the circumstances, the respondent had correctly filed the bankruptcy notice founded only on the balance of the judgment sum, as sums of money that have been paid and accepted by the respondent, cannot be construed as sums owing, as envisaged by s. 5 of the Act. The sums earlier paid, totaling S$5,943.91 must be taken as payment in part-satisfaction of the consent judgment as supplied above. Section 5 of the Act reads:

> **Condition on which creditor may petition**
>
> 5. (1) A creditor shall not be entitled to present a bankruptcy petition against a debtor unless:
>
> (a) the debt owing by the debtor to the petitioning creditor, or if two or more creditors join in the petition the aggregate amount of debts owing to the several petitioning creditors, amounts to thirty thousand ringgit; and … (emphasis added)

[7] In *Re Child* [1892] 2 QB 77, Vaughan C Williams, J observed:

It can scarcely, I think, have been the intention of the legislature that a judgment debtor should be liable to be served with a bankruptcy notice claiming from him a sum which is not due, **inasmuch as it has been paid by him and accepted by the judgment creditor** in reduction of the judgment debt (emphasis added);

[8] So what was the complaint by the appellant about? He was not denying that he owed a sum of money to the respondent, but what he denied was a larger sum that brought him within the threshold of a bankruptcy action ie, above the sum of RM10,000. In a word a miscalculation had occurred. The appellant ventilated that the respondent was not entitled to present the bankruptcy petition against him, as the amount owing as at the date of the issuance of bankruptcy notice dated 11 February 1998, was less than RM10,000. The bankruptcy notice, which was premised on RM12,440.79, was misleading and incorrect, with the actual balance being RM9,031.35 (S$3,943.82 x 2.29 {rate of S$ 1}). The respondent had failed to deduct the part payment made by the appellant correctly; had it correctly deducted the said part payment, the balance sum owing by the appellant would be less than RM10,000. It was erroneous for the respondent to convert the repayment, which was made in SGD in 1996 into ringgit Malaysia in 1998. The consent judgment had clearly stipulated that the repayment be made in SGD.

[9] With the sum being less than the RM10,000, and the bankruptcy notice being invalid, he had ventilated that he therefore should not be subject to any AORO. If that submission were correct then s. 105 of the Act would be applicable and the bankruptcy order must be annulled.

[10] Section 105 of the Act reads:

Power of court to annul adjudication in certain cases

105. (1) Where in the **opinion of the court a debtor ought not to have been adjudged bankrupt,** or where it is proved to the satisfaction of the court that the debts of the bankrupt are paid in full, or where it appears to the court that proceedings are pending in the Republic of Singapore for the distribution of the bankrupt's estate and effects among his creditors under the bankruptcy or insolvency laws of the Republic of Singapore and that the distribution ought to take place in that country, **the court may annul the adjudication.**

A (2) …

(3) …

(4) …

B (5) When the court annuls an adjudication under this section it shall also rescind the receiving order (emphasis added).

[11] In *Re Shuaib Lazim ex parte Mercantile Insurance Sdn. Bhd.* [1992] 4 CLJ 2066; [1992] 3 CLJ (Rep) 580, prior to granting the annulment order pursuant to s. 105 of the Act, the court had said:
C

> Where it is clear that the debtor ought not to have been adjudged bankrupt but had been so adjudged (which does happen from time to time in bankruptcy proceedings), what normally happens is that
D a motion pursuant to s. 105 usually filed by the petitioner himself, is moved, and normally is not opposed, whereupon the orders sought, which as per the said s. 105(1) and (5) are for annulment of the adjudication and rescission of the receiving order, are made as a matter of course.

E **[12]** In *Re Mat Shah; ex parte Raghbir Singh* [1981] 2 MLJ 159 the court had to consider whether a bankruptcy petition, pursuant to a bankruptcy notice, which had included illegal interest ought to be entertained or not. With the sum reduced below the statutorily permitted amount, with the illegal interest now
F eliminated, the court had no recourse but to dismiss the bankruptcy petition.

[13] The respondent here had canvassed that the deeming provision of s. 3(2)(ii) of the Act, in the circumstances of the case
G validated the bankruptcy notice and the AORO thus was good. It added that the part payment had been deducted from the judgment sum as reflected in the bankruptcy notice, and as the appellant did not challenge the bankruptcy notice within seven days, or at any time before he was adjudicated a bankrupt, he
H was prevented from nullifying the bankruptcy notice on the ground of mistake of excessive demand. The appellant thus was truly indebted to the respondent in the sum of more than the statutory minimum of RM10,000.

I

[14] Section 3(2)(ii) of the Act reads:

Act of bankruptcy

3. (1) …

(a) …

…

(2) A bankruptcy notice under this Act shall be in the prescribed form and shall state the consequences of non compliance therewith and shall be served in the prescribed manner:

Provided that a bankruptcy notice:

(i) …

(ii) shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such mistake; but if the debtor does not give such notice he shall be deemed to have complied with the bankruptcy notice; if within the time allowed he takes such steps as would have constituted compliance with the notice had the actual amount due been correctly specified therein.

[15] Having construed the consent order, we held the view that it was sensible and reasonable to deduct all the part-payment sums from the principal sum in its original currency, and only prior to the filing of the bankruptcy notice should the respondent convert the balance into ringgit Malaysia, at the prevailing market value. If the sum owed exceeded the statutory threshold after the conversion then only may a bankruptcy notice be issued. Otherwise the matter ends there. On this score we agreed with the view of the appellant. With the sum owed at the time of issuance of the bankruptcy notice being RM9,031.35 (S$3,943.82 x 2.29) the amount owing was below the permitted statutory limit for the filing of a bankruptcy action.

[16] As regards the argument submitted by the respondent that s. 3(2)(ii) of the Act applied we thought otherwise. We held the view that this provision as being inapplicable, unhelpful to the respondent, and irrelevant. In a gist, it demands that the bankruptcy notice be served in the prescribed manner and in the prescribed form, with consequences that will follow for want of its compliance. It legislates that a bankruptcy notice is not to be invalidated by reason only that the sum specified in the notice exceeds the amount actually due, unless within the time allowed for payment, the debtor gives notice to the creditor that he disputes the validity of the notice. If no notice is given the creditor shall be deemed to have complied with the bankruptcy notice.

[17] It was obvious to us that the complaint of the appellant was not restricted to the mere incorrectness of the sum due to the respondent, in that it exceeded the amount actually due to the respondent, but something that was fatal. At the risk of repeating, mathematically speaking the appellant only owed the respondent $S3,943.82 (RM9,031.35) and costs of RM 378 at the time of the filing of the bankruptcy notice, creditor's petition and at the date of the hearing.

[18] From the facts supplied, and after adhering to the above mode of calculation of the balance sum owed, we agreed with the appellant's stance and concluded that the calculation was wrong. That being so the bankruptcy notice was bad. The error was fatal and could not be saved or salvaged by s. 3(2)(ii) as the sum owing to the respondent was far below the statutory bar. This was not a formal defect or irregularity that could be saved by s. 131 of the Act. It had failed to comply with the mandatory requirement of s. 5 of the Act.

[19] Based on all the above reasons we allowed the appeal with costs. The order of the High Court was set aside and the deposit refunded.

[20] My brother judge YA Dato' Azhar @ Izhar Haji Ma'ah, JCA has read the draft copy of this judgment and agrees with the contents therein.

Hishamudin Mohd Yunus JCA:

[21] This is an appeal by the debtor (the appellant before this court) against a decision in a bankruptcy petition that had been filed at, and heard by, the High Court of Kuala Lumpur (Commercial Division). The senior assistant registrar ('the registrar') of the High Court had made a receiving order and an adjudication order against the debtor on 16 December 1998. The debtor then on 23 July 2002 applied under s. 105(1) of the Bankruptcy Act 1967 for the adjudication order to be annulled and for the receiving order to be rescinded. The registrar refused the application. Dissatisfied with the decision of the registrar, the debtor appealed to the judge in chambers. The learned judge, however, dismissed his appeal. The debtor now appeals to this court (the Court of Appeal).

[22] On 18 May 2009, this court unanimously allowed the appeal.

[23] I propose to begin my grounds by referring to s. 105 of the Bankruptcy Act 1967. This provision states:

> **105. Power of court to annul adjudication in certain cases**
>
> (1) Where in the opinion of the court a debtor ought not to have been adjudged a bankrupt, or where it is proved to the satisfaction of the court that the debts of the bankrupt are paid in full, or where it appears to the court that proceedings are pending in the Republic of Singapore for the distribution of the bankrupt's estate and effects among his creditors under the bankruptcy or insolvency laws of the Republic of Singapore and that the distribution ought to take place in that country, the court may annul the adjudication.
>
> (2) Where the adjudication is annulled under this section, all sales and dispositions of property, and payments duly made, and all acts theretofore done by the Official Assignee, or other person acting under his authority, or by the court, shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the court appoints, or in default of any such appointment revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the court declares by order.

(3) Notice of the order annulling an adjudication shall be forthwith gazetted and published in at least one local paper.

(4) For the purposes of this section any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond, in such sum and with such sureties as the court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full into court.

(5) When the court annuls an adjudication under this section it shall also rescind the receiving order.

[24] Next, I shall refer to s. 5(1) of the Bankruptcy Act. This section stipulates:

5. Conditions on which creditor may petition

(1) A creditor shall not be entitled to present a bankruptcy petition against a debtor unless:

(a) The debt owing by the debtor to the petitioning creditor, or if two or more creditors join in the petition the aggregate amount of debts owing to the several petitioning creditors, amounts to thirty thousand ringgit; and

[25] In the light of the above subsection (1) of s. 5, the crucial issue before the court is this: what was the amount of the debt owing by the appellant/debtor at the time of the issuance of the bankruptcy notice? Was it RM9,409 – as contended by the appellant? Or, was it RM12,440.79 – as maintained by the creditor (now the respondent before this court)? If the former is the case, then, as contended by the appellant, the respondent was not entitled to file the bankruptcy notice, as the minimum amount requirement was not met; and the adjudication order should not have been made against the appellant in the first place; and, hence, now, ought to be annulled. For, this would have been a case where the appellant ought not to have been adjudged a bankrupt.

[26] In the present case the debt of the appellant, and the partial repayments of the debt by him, were in Singapore currency. Therefore, also tied to this issue of the actual amount owing, is

the issue as to when the conversion from Singapore currency to Malaysian currency ought to be made, for the purpose of determining the actual amount owing at the time of the issuance of the bankruptcy notice.

[27] The bankruptcy notice was issued on 11 February 1998. It was based on a consent judgment obtained by the respondent against the appellant at the Magistrate Court of Kuala Lumpur on 1 November 1996. A peculiar feature about this judgment is that the amount of the debt stated in the judgment is in Singapore currency – and it is S$9,887.82. The judgment allows the debt to be paid either in Singapore currency or in Malaysian currency. The judgment allows the judgment debt to be paid in installments in the following manner. The first installment is S$4,943.91, and this amount was to be paid within two weeks of 1 November 1996. This is then followed by four monthly installments of S$1000 each, to be paid on the following dates: (1) on or before 1 December 1996, (2) on or before 1 January 1997, (3) on or before 1 February 1997 and (4) on or before 1 March 1997. The final installment of S$943.91 was to be paid on or before 1 April 1997. It is further stipulated in the judgment that should the debtor default in the paying of the installments, then the whole amount owing under the judgment becomes immediately due, together with legal costs of RM378.

[28] The appellant paid the first installment of S$4944 on 15 November 1996 and the second installment of S$1000 on 16 December 1996. These installments were paid in Singapore currency. However, thereafter, the appellant defaulted in the payments of the remaining installments. As a consequence, the respondent caused the bankruptcy notice (mentioned earlier) to be issued on 11 February 1998. In the bankruptcy notice, the respondent had deducted the two installment amounts paid by the appellant, but had added legal costs of RM378; and arrived at the demand sum of RM12,440.79.

[29] The respondent, in the bankruptcy notice, explain how they arrived at the sum of RM12,440.79. It is as follows:

Judgment sum	RM22,643.11
(S$9,887.82 x 2.29)	
[as per the rate published on 11/2/1998]	

Less	
(i) payment made on 15/11/1996 (S$4,944.00x 1.7800) [as per rate published on 15.11.96]	RM8,800.32
(ii) payment made on 16.12.96 (S$l,000x 1.7800) [as per rate published on 16.12.96]	RM1,780.00
	RM12.062.79
Add-	
Costs	RM 378.00
	RM12,440.79

[30] It is important to observe that in the above calculation by the respondent, currency conversion from Singapore currency to Malaysian currency were made thrice, that is to say, (1) on 11 February 1998 (date of the issuance of the bankruptcy notice), (2) on 15 November 1996 (date of the payment of the installment sum of S$4,944) and (3) on 16 December 1996 (date of the payment of the installment sum of S$1000). And having made these conversions, the respondent arrived at the ultimate sum of RM12,440.79.

[31] The appellant contends that the above method of calculation is erroneous. The appellant argues that the currency conversion should be made only once, and that is at the time of the filing of the bankruptcy notice on 11 February 1998; and had the correct method of calculation been used by the respondent, then the amount owing, as at the date of the issuance of the bankruptcy notice, would be less than the minimum requirement of RM10,000; and by reason of s. 5(1)(a) the respondent would not be entitled to commence the bankruptcy proceedings.

[32] According to the learned counsel for the appellant, the calculation should have been made in the following manner:

Computation of debt

Principal	S$9,887.82
Less -	
(l) Payment made on 15.11.1996	S$4,944.00
(2) Payment made on 16.12.1996	S$ 1,000.00
Balance of principal	S$3,943.82

Conversion of principal sum in the judgment from SGD to RM

S$3,943.82 x 2.29	RM9.031.35
[rate of exchange at 11 February 1998]	
Add-	
Costs	RM378.00
Debt due and owing	RM9,409.35

[33] It will be noted from the above computation by the appellant that conversion from Singapore currency to Malaysian currency is made only once, that is, after the deduction of the two installment payments made in the Singapore currency. In other words, what should be converted is only the balance sum of S$3,943.82; and not any other sum (or sums).

[34] In my judgment, the appellant's method of computation is fair and correct. This is because the judgment debt is stated in the Singapore currency and it is clearly stated in the judgment that the installments could be paid in that currency. Hence as a matter of principle, conversion to the Malaysia currency, for the purpose of the bankruptcy, should only be made at the time of the issuance of the bankruptcy notice (that is, 11 February 1998). To my mind, to embark on the conversion of any other sum or sums (other than the sum of S$3,943.82), for the purpose of determining the actual amount owing at the time of the issuance of the bankruptcy notice, is tantamount to denying the appellant the exercise of his right under the judgment to the fullest.

[35] It is submitted by the learned counsel for the respondent before this court that it is too late now for the appellant to dispute the correctness of the amount stated under the bankruptcy notice. It is argued by counsel that if the appellant disputes the

amount of debt owing as stated in the bankruptcy notice, then the appellant ought to have invoked para (ii) of the proviso to s. 3(2) of the Bankruptcy Act at the time of being served with the bankruptcy notice; and ought to have notified the respondent of the alleged error in the amount within the time frame as prescribed by the proviso. This proviso states:

> (2) A bankruptcy notice under this Act shall be in the prescribed form and shall state the consequences of non-compliance therewith and shall be served in the prescribed manner:
>
> Provided that a bankruptcy notice:
>
> (i) [not relevant]
>
> (ii) shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such mistake; but if the debtor does not give such notice he shall be deemed to have complied with the bankruptcy notice, if within the time allowed he takes such steps as would have constituted compliance with the notice had the actual amount due been correctly specified therein.

[36] The respondent refers to the following cases:

(1) *Re Amarjit Kaur Bakshis Singh, Ex p BSN Commercial Bank (Malaysia) Bhd* [2001] 1 CLJ 412;

(2) *Re Shuib Hj Ibrahim, Ex p BPK Credit & Leasing Sdn Bhd* [2003] 3 CLJ 679;

(3) *Development & Commercial Bank Bhd v. Datuk Ong Kian Seng* [1995] 3 CLJ 307;

(4) *Re Woo Yoke San, Ex p OCBC Bank (M) Bhd* [2006] 2 CLJ 589; and

(5) *Re: Wong Choo Tah @ Wang Tse Son; Ex p Phileo Allied Bank (M) Bhd* [2004] 1 LNS 177.

[37] In my judgment, para (ii) of the proviso to subsection (2) of s. 3 of the Bankruptcy Act is irrelevant. This is because the amount actually due under the bankruptcy notice does not in the first place meet the minimum requirement as stipulated by

s. 5(1)(a) of the Act. In other words, the request for the issuance of the bankruptcy notice ought not to have been made by the respondent in the first place. The above cases cited by the respondent, with respect, are also irrelevant. The issue in these cases concerns the stating of excessive demands in the bankruptcy notice. These cases do not deal with the issue of satisfying the minimum sum requirement as stipulated by s. 5(1)(a).

[Appeal allowed with costs]